

## Office of the Secretary of Defense

## § 321.9

to be so old as to no longer be pertinent to the stated purposes of the records system. It may also be requested when there is recent information of a pertinent type that is not included in the record.

(iv) *Completeness.* Amendment may be requested where information in a record is incomplete with respect to its purpose. The data thought to have been omitted should be included or identified with the request.

(v) *Fairness.* Amendment may be requested when a record is thought to be unfair concerning the subject, in terms of the stated purposes of the record. In such cases, a source of additional information to increase the fairness of the record should be identified where possible.

(vi) *Other reasons.* Reasons for requesting amendment are not limited to those cited above. The content of the records is authorized in terms of their stated purposes which should be the basis for evaluating them. However, any matter believed appropriate may be submitted as a basis of an amendment request.

(vii) *Court orders and statutes* may require amendment of a file. While they do not require a Privacy Act request for execution, such may be brought to the attention of DSS by these procedures.

(c) *Assistance.* Individuals seeking to request amendment of records pertaining to themselves that are maintained by DSS will be assisted as necessary by DSS officials. Where a request is incomplete, it will not be denied, but the requester will be contacted for the additional information necessary to his request.

(d) This section does not permit the alteration of evidence presented to courts, boards and other official proceedings.

### § 321.8 DSS review of request for amendment.

(a) *General.* Upon receipt from any individual of a request to amend a record pertaining to himself and maintained by the Defense Security Service, Office of FOI and Privacy will handle the request as follows:

(1) A written acknowledgment of the receipt of a request for amendment of a

record will be provided to the individual within 10 working days, unless final action regarding approval or denial can be accomplished within that time. In that case, the notification of approval or denial will constitute adequate acknowledgment.

(2) Where there is a determination to grant all or a portion of a request to amend a record, the record shall be promptly amended and the requesting individual notified. Individuals, agencies or components shown by accounting records to have received copies of the record, or to whom disclosure has been made, will be notified, if necessary, of the amendment by the responsible official. Where a DoD recipient of an investigative record cannot be located, the notification, if necessary, will be sent to the personnel security element of the parent Component.

(3) Where there is a determination to deny all or a portion of a request to amend a record, the office will promptly:

(i) Advise the requesting individual of the specifics of the refusal and the reasons;

(ii) Inform the individual that he may request a review of the denial(s) from 'Director, Defense Security Service, 1340 Braddock Place, Alexandria, VA 22314-1651.' The request should be brief, in writing, and enclose a copy of the denial correspondence.

(b) DSS determination to approve or deny. Determination to approve or deny and request to amend a record or portion thereof may necessitate additional investigation or inquiry be made to verify assertions of individuals requesting amendment. Coordination will be made with the Director for Investigations and the Director of the Personnel Investigations Center in such instances.

### § 321.9 Appeal of initial amendment decision.

(a) *General.* Upon receipt from any individual of an appeal to review a DSS refusal to amend a record, the Defense Security Service, Office of FOI and Privacy will assure that such appeal is handled in compliance with the Privacy Act of 1974 and DoD Directive 5400.11 and accomplish the following:

(1) Review the record, request for amendment, DSS action on the request and the denial, and direct such additional inquiry or investigation as is deemed necessary to make a fair and equitable determination.

(2) Recommend to the Director whether to approve or deny the appeal.

(3) If the determination is made to amend a record, advise the individual and previous recipients (or an appropriate office) where an accounting of disclosures has been made.

(4) Where the decision has been made to deny the individual's appeal to amend a record, notify the individual:

(i) Of the denial and the reason;

(ii) Of his right to file a concise statement of reasons for disagreeing with the decision not to amend the record;

(iii) That such statement may be sent to the Defense Security Service, Office of FOI and Privacy, (GCF), 1340 Braddock Place, Alexandria, VA 22314-1651, and that it will be disclosed to users of the disputed record;

(iv) That prior recipients of the disputed record will be provided a copy of the statement of disagreement, or if they cannot be reached (e.g., through deactivation) the personnel security element of their DoD component;

(v) And, that he may file a suit in a Federal District Court to contest DSS's decision not to amend the disputed record.

(b) *Time limit for review of appeal.* If the review of an appeal of a refusal to amend a record cannot be accomplished within 30 days, the Office of FOI and Privacy will notify the individual and advise him of the reasons, and inform him of when he may expect the review to be completed.

**§ 321.10 Disclosure to other than subject.**

(a) *General.* No record contained in a system of records maintained by DSS shall be disclosed by any means to any person or agency outside the Department of Defense, except with the written consent or request of the individual subject of the record, except as provided in this section. Disclosures that may be made without the request or consent of the subject of the record are as follows:

(1) To those officials and employees of the Department of Defense who have a need for the record in the performance of their duties, when the use is compatible with the stated purposes for which the record is maintained.

(2) Required to be disclosed by the Freedom of Information Act.

(3) For a routine use as described in DoD Directive 5400.11.

(4) To the Census Bureau, National Archives, the U.S. Congress, the Comptroller General or General Accounting Office under the conditions specified in DoD Directive 5400.11.

(5) At the written request of the head of an agency outside DoD for a law enforcement activity as authorized by DoD Directive 5400.11.

(6) For statistical purposes, in response to a court order, or for compelling circumstances affecting the health or safety of an individual as described in DoD Directive 5400.11.

(7) Legal guardians recognized by the Act.

(b) *Accounting of disclosures.* Except for disclosures made to members of the DoD in connection with their routine duties, and disclosures required by the Freedom of Information Act, an accounting will be kept of all disclosures of records maintained in DSS systems.

(1) Accounting entries will normally be kept on a DSS form, which will be maintained in the record file jacket, or in a document that is part of the record.

(2) Accounting entries will record the date, nature and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made.

(3) An accounting of disclosures made to agencies outside the DoD of records in the Defense Clearance and Investigations Index (V5-02) will be kept as prescribed by the Director of Systems, DSS.

(4) Accounting records will be maintained for at least 5 years after the last disclosure, or for the life of the record, whichever is longer.

(5) Subjects of DSS records will be given access to associated accounting records upon request, except as exempted under § 321.13.